



HAGENS BERMAN

Jeff Friedman
HAGENS BERMAN SOBOL SHAPIRO LLP
715 HEARST AVENUE, SUITE 202
BERKELEY, CA 94710
www.hbsslaw.com
Direct (510) 725-3032
shanas@hbsslaw.com

January 22, 2013

Via ECF

Hon. Richard Seeborg
U.S. District Court, N.D. Cal.
Courtroom 3 - 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *In re Optical Disk Drive Products Antitrust Litig.*,
Case No. 3:10-md-2143 RS (N.D. Cal.)

Dear Judge Seeborg:

The parties jointly submit this letter in lieu of a formal Case Management Conference Statement in advance of the currently scheduled January 25, 2013 case management conference because there is only a single issue which they believe needs to be addressed at the CMC. The single unresolved issue between the parties relates to the briefing schedule for Defendants' oppositions and Plaintiffs' replies in connection with the upcoming class certification motions. Defendants and Plaintiffs each seek a thirty-day extension to their time for filing their opposition and reply briefs, respectively, and have been unable to reach agreement on that schedule.

Joint Statement Regarding Discovery Progress

The Court's November 8, 2012 Case Management Scheduling Order extended the then-existing discovery and class certification briefing schedule, and stated that "[d]iscovery disputes will continue to be referred to Judge Spero, who anticipates setting a regular discovery conference to monitor the parties' progress and to supervise the pace of production." (Case Management Scheduling Order, ECF No. 713, at 1.) Since that time, the parties have prepared and submitted two joint discovery conference statements (ECF Nos. 715, 743), and Judge Spero has held two separate discovery conferences – on November 29, 2012 and January 17, 2013. The next discovery conference is set for February 28, 2013, with another joint discovery conference statement due February 21, 2013. As a result of these regular discovery conferences, the parties have made substantial progress limiting their disputes and pushing forward the discovery process.

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The Parties' Positions Regarding Scheduling Dispute

A. Plaintiffs' Position

Plaintiffs request an adjustment to the current class certification schedule. The current schedule allows Defendants almost three months (84 days) to oppose class certification, but allows Plaintiffs less than a month (28 days) to take depositions of any declarants proffered by Defendants with their opposition, and then to file Plaintiffs' respective replies. This schedule will be unduly prejudicial to Plaintiffs, given the complexity of economic issues in this case, the likelihood that Defendants will submit multiple expert reports and fact declarations in opposition to class certification (as has been the case in several other high-technology antitrust cases litigated in this District), and the sheer number of Defendants in this case. Under the present schedule, Plaintiffs are only permitted 14 days from the date on which Defendants' opposition papers are filed to analyze the defense material and prepare for and take Defendants' expert and/or other declarant depositions. The schedule set forth below is submitted without prejudice to Plaintiffs seeking additional time to file reply papers once the Defendants file their opposition papers, expert reports and declarations. Plaintiffs proposed the following schedule to Defendants:

Event	Current Date	Number of days	Plaintiffs' Proposed Date	Proposed Number of Days
Case Management Conference	n/a		Fri., March 15, 2013	
L/d for filing of motion for class certification	Mon., April 29, 2013		No change	
L/d for depositions of proposed class representatives and plaintiffs' experts	Mon., June 10, 2013	42 days	No change	
L/d for filing of oppositions to class certification	Mon., July 22, 2013	42 days	No change	
L/d for depositions of defendants' experts or other declarants in opposition to class certification	Mon., Aug. 5, 2013	14 days	Wed., Aug. 21, 2013	30 days
L/d for replies in support of class certification	Mon., Aug. 19, 2013	14 days	Friday, Sept. 20, 2013	30 days
Hearing on motion for class certification	Fri., Aug. 30, 2013 at 10:00 a.m.	11 days	Fri., Oct. 18, 2013 or at the Court's convenience	28 days, or at the Court's convenience

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Defendants do not oppose this request for an additional 30 days, but request a reciprocal 30 days to file their oppositions. This would mean that Defendants are seeking 114 days (*nearly four months*) to oppose class certification. Granting Plaintiffs' request for an additional 30 days, while at the same time allowing Defendants an additional 30 days, does nothing to address the inequities of the current schedule – in fact, it would just extend the *status quo*. Defendants would continue to have a comparatively longer period of time to file their oppositions than Plaintiffs would with respect to their replies. Respectfully, Plaintiffs request that the Court enter the schedule proposed above.

B. Defendants' Position

In November 2012, Plaintiffs already requested a 90-day extension of their deadline to file their Motions for Class Certification. As a courtesy, Defendants did not oppose Plaintiffs' request, and the Court granted Plaintiffs until April 29, 2013. Defendants do not oppose Plaintiffs' latest request for an additional thirty days for their replies, and seek only a reciprocal 30-day extension for the filing of their Oppositions to the Direct Purchaser Plaintiffs' and the Indirect Purchaser Plaintiffs' two separate class certification motions. Plaintiffs refused and offered only a 14-day extension. This is Defendants' first request for an extension.

As the Court is aware, there are a number of substantial issues to be addressed during the parties' class certification briefing. The Court recognized these threshold issues in its ruling on the second set of Motions to Dismiss: "There remain some troubling issues, particularly in the DP SAC, with respect to how the products have been defined. ... A number of other uncertainties exist as to whether the definitions in the two complaints are entirely consistent with the various ways in which ODDs are actually sold, and whether the two groups of plaintiffs have correctly distinguished between what should be characterized as 'direct' and 'indirect' purchases." (Order Denying Motions to Dismiss (Dkt. 531) at 3.) The Court then pointed out that "[t]hose issues will require further clarification at the class certification stage, and may necessitate some modification to the class definitions from what is presently alleged in the complaints." (*Id.*)¹ Plaintiffs will undoubtedly submit expert opinions in an attempt to address these issues, and Defendants will need to do the same.

By the time of their April filing, Plaintiffs will have had over 12 months since the Court's motion to dismiss ruling to take discovery, work with their experts, and prepare their class certification motions. By contrast, Defendants have no idea at this point what the Direct Purchaser Plaintiffs' and the Indirect Purchaser Plaintiffs' two class certification motions will

¹ See also Order at 7 ("[T]he definitions in the DP SAC are not entirely clear, and there is some uncertainty as to the scope of the putative class and the products involved").

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look like—the identity or number of experts on which Plaintiffs will rely, the potential need for *Daubert* motions in connection with any proffered expert opinions, the scope of the classes Plaintiffs will seek to certify, the issues or products which may be raised by those motions, and who will even be the named Plaintiffs, in the case of the Indirect Purchaser Plaintiffs. Under the current schedule, Defendants have only 12 weeks to draft Oppositions to the Direct Purchaser Plaintiffs’ and Indirect Purchaser Plaintiffs’ two independent Motions, depose an unknown number of Plaintiffs’ experts, work with our own experts to prepare their own sets of opinions and reports, and complete the depositions of all named Plaintiffs.

Accordingly, while Defendants do not oppose Plaintiffs’ request for an additional thirty days to prepare their individual reply briefs, Defendants ask that the Court similarly grant this first request for a 30-day extension to prepare and file their class certification opposition briefs. Defendants’ proposed modification to the schedule is set forth below.

<u>Event</u>	<u>Current Date</u>	<u>Proposed Date</u>
Case Management Conference	Jan. 25, 2013	
Further Case Management Conference		Mar. 29, 2013
Deadline for Filing Motions for Class Certification	Apr. 29, 2013	Apr. 29, 2013
Deadline for Depositions of Proposed Class Reps, and Plaintiffs’ Experts	June 10, 2013	June 25, 2013
Deadline for Filing Oppositions to Class Certification Motions	July 22, 2013	Aug. 21, 2013
Deadline for Depositions of Defendants’ Experts, and any Declarants in Oppositions to Class Cert.	Aug. 5, 2013	Sept. 20, 2013
Deadline for Filing Replies in Support of Motions for Class Certification	Aug. 19, 2013	Oct. 21, 2013
Hearing on Motions for Class Certification	Aug. 30, 2013 (10:00 am)	Nov. 1, 2013 (or at the Court’s convenience)

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Sincerely,

DATED: January 22, 2013

HAGENS BERMAN SOBOL SHAPIRO LLP

By /s/ Jeff D. Friedman
JEFF D. FRIEDMAN

Shana E. Scarlett (217895)
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
jefff@hbsslaw.com
shanas@hbsslaw.com

*Interim Lead Counsel for Indirect
Purchaser Plaintiffs*

DATED: January 22, 2013

SAVERI & SAVERI. INC.

By /s/ Guido Saveri
GUIDO SAVERI

R. Alexander Saveri (173102)
Cadio Zirpoli (179108)
706 Sansome Street
San Francisco, CA 94111
Telephone: (415) 217-6810
Facsimile: (415) 217-6813
guido@saveri.com
rick@saveri.com
cadio@saveri.com

Interim Lead Counsel for Direct Purchaser Class

DATED: January 22, 2013

LATHAM & WATKINS LLP

By /s/ Belinda S Lee
BELINDA S LEE

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505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 395-8240
Facsimile: (415) 395-8095
belinda.lee@lw.com

Liaison Counsel for Defendants